



Pregnancy, ADA/504, & Title IX: Supporting All Students Across Offices

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MEET YOUR FACILITATORS



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TODAY'S SESSION



BUT FIRST, WHY?

"Pregnancy is consistently the most common family-related reason given by female students" for why they dropped out of school, according to the US Department of Education.

Data from the CDC and National Education Statistics shows that about a quarter of female students who drop out of high school cite pregnancy or parenting as the reason.



TODAY'S STUDENT

A greater number of college students weight class schedules with family and parenting responsibilities



The birth rate for women aged 20–24 was 63.0 births per 1,000 women in 2020, down 5% from 2019 (66.6)



The rate for women aged 25–29 was 90.2 births per 1,000 women, down 4% from 2019 (93.7)



In 2020, the mean age of mothers at first birth was 27.1 years, an increase from 27.0 in 2019

National Vital Statistics Reports Volume 70, Number 17, February 7, 2022

<https://www.cdc.gov/nchs/data/nvsr/nvsr70/nvsr70-17.pdf>

TITLE IX



Title IX prohibits discrimination on the basis of sex in educational programs and activities.

This includes discrimination on the basis of pregnancy and related conditions.

NONDISCRIMINATION IS BROAD

Extends to those experiencing pregnancy and related conditions and treating parental/family status differently based on sex.

Equitable access and ability to fully participate in academic program, activities, practicums/field placements, and athletics.

Pregnancy discrimination is prohibited in:

- Admissions
- Student programs or activities
- Employment



WHAT ARE RELATED CONDITIONS?

Includes "childbirth, false pregnancy, termination of pregnancy, or recovery therefrom"



TITLE IX OBLIGATIONS

Summary of the obligations relating to pregnant students

- Allow them to make up any missed work without penalty
- Treat them similarly to students with a temporary disability
- They must be allowed to return to the same academic and extracurricular status as before their medical leave began
- Must provide reasonable adjustments, like a larger desk, elevator access, or allowing frequent trips to the restroom



TITLE IX OBLIGATIONS (Part 2)

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DO YOU HAVE A STUDENT LEAVE POLICY? DOES THIS STUDENT QUALIFY?

Treat pregnancy like a justification for a leave of absence for so long a period of time as deemed medically necessary by the student's doctor.

QUOTES FROM GUIDANCE

"Your school must provide you with reasonable adjustments, like a larger desk, elevator access, or allowing you to make frequent trips to the restroom, when necessary, because of your pregnancy."

"To ensure a pregnant student's access to its educational program, when necessary, a school must make adjustments to the regular program that are reasonable and responsive to the student's temporary pregnancy status. For example, a school might be required to provide a larger desk, allow frequent trips to the bathroom, or permit temporary access to elevators."



TITLE IX

Nondiscrimination here is broad.

Extends to those experiencing pregnancy and related conditions and treating parental/family status differently based on sex.

Equitable access and ability to fully participate in academic program, activities, practicums/field placements, and athletics



ADJUSTMENTS ARE...

“Medically necessary” based on assessment and “note” from treatment provider for immediate implementation

- Furniture size, shape, position
- Remote learning/hybrid learning
- Breaks, access to food or hydration
- Ability to reschedule tests
- Excused absences specific to treatment and care
- Late submission of expected work
- Alternative make up work of similar or like nature
- Excused absences for parenting and medical care for infant or child

WHAT ABOUT "PARENTS" AND "PARENTING?"

Cannot apply a rule about the actual or potential parental or marital status of a student, applicant, or employee that treats people differently based on sex.

These are from 1975!



WHAT ABOUT ACCESSIBILITY & ADA/SECTION 504?

AMERICANS WITH DISABILITIES ACT AND SECTION 504

ADA

"...no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (1990).

SECTION 504

"No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance"

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C." Code of Federal Regulations, title 28 (2002):516-544

ADA/504 AND PREGNANCY

Pregnancy, alone, is not a disability...EXCEPT UNDER...



SECTION 504

It may be considered a temporary disability in certain circumstances.

ADA

It may be considered a disability when one or more impairments related to pregnancy are present OR when a condition arising from pregnancy becomes long-lasting (i.e.: post-partum depression or gestational diabetes that becomes Type II).

TEMPORARY DISABILITY

Treat disabilities related to pregnancy and related conditions in the same manner and under the same policies as any other temporary disability or physical condition.

CONSISTENT PROCESS

Disability and conditions related to pregnancy should be placed in the student access and accommodation lane. That is, the student must disclose and be able to provide documentation sufficient to support their accommodation request.

INTERIM ACCOMMODATION END POINT

Accommodations provided for a condition that results from pregnancy is often time limited—or interim.

Case review post-delivery is vital to ensure either a closure of the request OR to document continuation of the resulting condition OR to substantiate a new condition.

THE RARE SITUATIONS

There will be times when pregnancy does result in a rarer situation that becomes a qualifying disability. The practitioner must be able to engage in an interactive process case-by-case and situation by situation.

For Example... A student breaks her pelvis during delivery and subsequently has an extreme, newly acquired mobility disability.

PRIVACY CONSIDERATIONS

If there is a determination that information is needed that would substantiate the disability/condition, some considerations regarding privacy may include:

- Ensure the correct office supporting students is the recipient of any documentation.
- Follow your privacy policies (including FERPA).
- Be mindful of what documents are requested and collected – what's actually necessary or sufficient.
- Ensure that you are storing and securing files.
- Educating faculty members about how (not) to request medical information from the student
- Educating student on their rights to access and privacy.



ADJUSTMENTS V ACCOMMODATIONS

DISTINCTIONS

- Disability-related
- Required paperwork
- Recordkeeping

34 CFR 106.40

SIMILARITIES

- Fact-specific and individualized
- Needs may change over time
- Fundamental alteration analysis

WHAT'S THE DIFFERENCE?

Title IX affords adjustments and/or support measures while ADA/504 affords access and accommodation; each ensure equitable access to educational programs or activities.



Adjustments are time-limited for the period of the documented "medical necessity"



Supportive measures have no medical requirements ; they require only a request as related to a Title IX matter



Accommodations require the presence of a "qualified" disability and/or condition

JUST TO REVIEW: ADJUSTMENTS UNDER TITLE IX

“Medically necessary” based on assessment and “note” from treatment provider for immediate implementation

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- Excused absences specific to treatment and care
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- Alternative make up work of similar or like nature

ACCOMMODATIONS UNDER ADA/504

- Supported by documentation that is sufficient to make an accommodation determination.
- Furniture size, shape, position
- Remote learning/hybrid learning
- Breaks, access to food or hydration
- Ability to reschedule tests
- Excused absences specific to treatment and care
- Late submission of expected work
- Alternative make up work of similar or like nature

SOUND SIMILAR?

In fact, adjustments may also be reasonable accommodations.

The difference is:

YES...but recall that the entry point and disclosure are what differs.

The point is to direct, coordinate and provide access.



POLICY TO PRACTICE

Policies account not only for regulation but provide for a process that is understandable and –

- Identify a single point of first entry (a proactive practice)
- Provide consistent information using the correct terms and definitions
- Support the student into the correct lane or lanes to begin
- Identify appropriate services supports

PRACTICES THAT ACTUALIZE...

- A one-stop type of service and support consistent information and centralized reporting
- Timely consultation/communication between involved offices
- Effective case management team approach (multiple offices)
- Regular communication between involved offices and the individual student
- Documentation at each stage of service
- Education, education, education to the campus community

RECENT ED RESOLUTIONS & GUIDANCE



JUNE 2022

Salt Lake Community College
Resolution Agreement



October 2022

Pregnancy and Parenting
Resource



January 2023

Troy University Resolution
Agreement

LESSONS LEARNED

Make reasonable responsive adjustments

Provide accessible information for pregnant students

Designate a central contact to centralize response

Respond promptly to pregnancy discrimination complaints

Engage in the interactive process

Consider whether there is a temporary disability

Train employees on your rules and process

IMPLEMENTATION

Review or create
leave policy

Update
community
trainings to
include
pregnancy+

Create resources
for pregnant
students for the
web, handbooks

Remember
student-
employees

Review
policies to
ensure
inclusion of
pregnancy+

Outreach
and
collaboration
with
stakeholders

Identify
lactation
space

Get
feedback
from
students
with
experience

Coordinate with
accessibility
office

LET'S HAVE A CONVERSATION!

PARTICIPANTS WILL ENGAGE FACILITATORS FOR AN
OPPORTUNITY TO LAND A COMPLIMENTARY ADA/504
CONSULT WITH THE GRAND RIVER SOLUTIONS TEAM

JOIN TEAM TITLE IX OR TEAM ADA/SECTION 504:

We will ask ADA/Section 504
and Title IX team members to
respond to each scenario!

Pick a spokesperson/people

Get with your team and
discuss...



NOW WHAT? SCENARIO 1

- A student in a science program asks a faculty member if they can be excluded from a series of lab sessions involving in chemicals that may be harmful for pregnant people. The instructor is insistent that they must complete these labs in order to not fail the class:
 - As Title IX Coordinator, what are your next steps?
 - What role would the ADA/504 coordinator play?
 - Who else are you bringing into the conversation?
 - How can we be creative to ensure equal access for this student?



WHAT WOULD YOU DO IF...?

Scenario 2

A student had a healthy pregnancy and delivered without issue. During the first night in the hospital, she was diagnosed with a permanent heart condition, AFIB.

The student had previous Title IX adjustments due to a need for a larger desk and Title IX is now insisting that this new matter is a Title IX adjustment and not ADA.

WHAT WOULD YOU DO IF...?

Scenario 3

A student who is nursing receives the ability to exit structured exams to then go outside to nurse and interact with their partner. This was authorized by the Title IX office as an adjustment.

Another student, in the same program, one term later requested accommodations that would allow breaks and the ability to exit the building to be able to remove their mask due to a qualifying condition such as CF.

The first student was given the adjustment. The second student's request was determined to be a test security risk--in other words, a fundamental alteration.

WHAT WOULD YOU DO IF...?

Scenario 4

A student has no adjustments and no accommodations. They have an uneventful pregnancy, but a traumatic birth that results in the child having severe Cerebral Palsy (CP).

The student had requested a year leave of absence from the Title IX Office, which granted it, and is now seeking another year extension. Title IX refers them to Disability Services.

SOME CASE REFERENCES

[Troy University, AL OCR# 04-21-2060](#) (2023) Failure to engage and offer adjustments

[Salt Lake Community College OCR# 08-22-2021](#) (2022) Policy and practices leading to forced drop

[University of Maine at Fort Kent OCR# 01-17-2317](#) (2020) Policy, procedures and qualified personnel

[Northeastern University OCR# 01-19-2158](#) (2019) Failure to provide adjustments

[Rivertown School of Beauty OCR# 04-15-2363](#) (2019) Dismissal at 7 months based on pregnancy based on policy that violated Title IX

[California State University East Bay OCR# 09-18-2245](#) (2017) Pregnancy related hospitalization

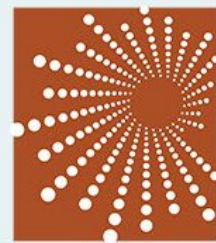
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